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January 23, 2023

VIA ECF

The Honorable John Milton Younge
USDC Eastern District of Pennsylvania
4007 U.S. Courthouse
601 Market Street, Courtroom 4-A
Philadelphia, PA 19106

**RE: *United States es rel. Ellsworth Associates, LLP v. CVS Health Corporation, et al.*,
No. 2:19-cv-02553-JMY**

Dear Judge Younge:

Plaintiff-Relator, Ellsworth Associates, LLP, respectfully submits this notice of supplemental authority to inform the Court that the United States Supreme Court recently granted certiorari in *United States ex rel. Schutte v. Supervalu Inc.*, 2023 WL 178398 (Jan. 13, 2023) and *United States ex rel. Proctor v. Safeway, Inc.*, 2023 WL 178393 (Jan. 13, 2023), two Seventh Circuit cases that address whether the Supreme Court's decision in *Safeco Insurance Co. v. Burr*, 551 U.S. 47 (2007), which held that a defendant lacks scienter to violate the Fair Credit Reporting Act if his interpretation of the law was "objectively reasonable," applies to FCA cases.

The parties here dispute whether *Safeco's* "objectively reasonable" standard applies to FCA cases such as this one. *See, e.g.*, Defendants' MTD at 20; Plaintiff's Opp. to MTD at 29-30; Defendants' Reply in Support of MTD at 10-11; Plaintiff's Sur-Reply to MTD at 9-12.

Prior to filing this notice, Plaintiff consulted with counsel for Defendants, Brian Stimson, who indicated that Defendants do not oppose its filing.

Respectfully submitted,

BARON & BUDD P.C.

By: /s/ W. Scott Simmer

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